THE HONOURABLE SRI JUSTICE V. ESWARAIAH

WRIT PETITION No.11787 OF 2005

DATED: 06-04-2006

BETWEEN
Konathala Manohar Rao Naidu,
S/o. Jagga Rao,
Prop. Manohara Lodge,
R/o. Anakapalle,
Visakhapatnam District.

...PETITIONER

AND
The Commissioner
Anakapalle Municipality,
Anakapalle,
Visakhapatnam District
and others.

...RESPONDENTS

ORDER:

Petitioner seeks a Writ of Mandamus to declare the proposed action of the respondents to demolish and take property in D.No.14-7-14, Anakapalle called as Manohar Lodge without following the procedure under the Land Acquisition Act as illegal and arbitrary.

Learned counsel for the petitioners submits that the father of the petitioner constructed the aforementioned lodge in an area of about 750 sq. yards with ground + 2 floors, which has been assessed to tax. While so, the first respondent issued a notice dated 05.05.2005 to the petitioner stating that the municipal council has passed resolution for widening the road and the Government had also sanctioned funds to the R & B Department to widen the main road in Anakapalle town to 80 feet for a length of about 2 Kms from Sharda Bridge to Sunkarametta Junction and the existing structure bearing

D.No.14-7-14 falls within the alignment of 80 feet road widening.
The notice further states that the municipality is conferred with powers to remove the structures falling within the alignment of 80' for road widening purpose.

The learned counsel further submits that for the purpose of widening the road the respondents earmarked the structures belonging to the petitioner and the respondents are proposing to demolish the same without following due procedure prescribed in law. He further submits that even under the Andhra Pradesh Municipalities Act, 1965 (for short 'the Act') without acquiring the lands of the private citizens, portion of any property cannot be taken away for the purpose of road widening, either by way of private negotiations or by way of initiating proceedings under the Act. He further submits that the petitioner has not encroached any road and he has constructed the building or structures as per the approved plan only.

No doubt widening/laying of the road is in the public interest but while laying the road, if any property of private individual is coming in the way, it is for the respondents to acquire the same by following due process of law. This Court disposed of a number of writ petitions directing the respondent not to demolish the houses of the private citizens without following due process of law or private negotiations.

Having regard to the facts and circumstances of the case,
the respondents are directed not to demolish or take away any portion of the property of the petitioner and not to dispossess him without following due process of law under Section 172(2) or 174 of the Act.

The writ petition is accordingly disposed of.

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V. ESWARAIAH, J

April 6, 2006
DSK